

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0078P
STATE CORPORATE INCOME TAX: PENALTY
For 1998**

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ISSUES

I. Income Tax - Penalty

Authority: 45 IAC 15-11-2; IC 6-8.1-10

Taxpayer protests the negligence penalty assessment for under reporting and payment of estimated tax.

STATEMENT OF FACTS

Taxpayer is a subsidiary corporation and limited partner in a group of entities engaged in the manufacture and multinational marketing of consumer products. Taxpayer's parent company sold assets and as part of the sale a sizable gain was realized on various patents and trademarks related to the consumer products business. The party/parties responsible for making estimated payments for taxpayer were unaware of taxpayer's ownership of the aforementioned patents and trademarks and did not include their value in the determination of taxpayer's estimated payments and these payments were subsequently underpaid by taxpayer with a penalty resulting and said penalty the subject of this protest.

I. Income Tax - Penalty

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10. The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer argues that the penalty was inappropriate based on taxpayer's exemplary prior performance and the unique nature of the one-time event generating the taxable amount. Standing alone neither of the taxpayer's arguments are dispositive but they are factors which are indicative of the taxpayer's reasonable care, caution, or diligence.

FINDING

Taxpayer protest sustained.